IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4445 OF 2004

Shri Prakash J. Kanade and ors. ..Petitioners

Vs.

The Union of India and ors. ..Respondents

Mr. S.J. Rairkar for petitioners.
Mr. R.R. Shetty with Mr. S.S. Sarkar for respondent no.2.

**CORAM: B.H. MARLAPALLE & NARESH H. PATIL,JJ.**

**Date : September 28, 2006.**

**P.C.:**

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. By the impugned order dated 10/12/2002 the application filed for condonation of delay in O.A. No.583 of 2002 has ben rejected.

3. Our attention has been invited to the decision of the Central Administrative Tribunal, Bangalore Bench, whereby similarly placed original applicants have succeeded. It is also not disputed that the said

decision of the CAT, Bangalore Bench was set aside by the Karnataka High Court and, therefore, the employees concerned have filed SLP which is pending as at present.

4. When the validity of Annexure "B" issued on 4/2/1999 to the Rules framed in the year 1995 was under challenge and one of the Benches of the Tribunal had upheld the said challenge, the delay in approaching the Tribunal by the present petitioners ought to have been condoned and we are not impressed with the reasoning set out in the impugned order refusing to condone the delay. We have perused the affidavit in reply filed by the Chief Administrative Officer of Respondent No.2 and we do not deem it appropriate to deal with the grievance of the petitioners raised in the main application on merits, as at present and that can be more efficaciously gone into by the Tribunal itself.

5. We, therefore, allow this petition and set aside the impugned order. Consequently, M.P. No.389 of 2002 stands allowed and O.A.No. 583 of 2002 is

restored to the file of the Tribunal. Needless to mention, the said O.A. will be taken up for hearing after the pending SLP is decided by the Apex Court.

6. Rule made absolute accordingly with no order as to costs.

**(Naresh H. Patil, J.)** **(B.H. Marlapalle,J.)**